

# Reforming the Private Rented Sector

CIEH submission to the Department for Levelling Up, Housing and Communities Committee

August 2022

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## About the Chartered Institute of Environmental Health (CIEH)

CIEH is the professional voice for environmental health representing over 7,000 members working in the public, private and third sectors, in 52 countries around the world. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

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## Key Points:

We welcome the approach from the Department for Levelling Up, Housing and Communities taking a long overdue approach to reforming the private rented sector (PRS). CIEH has long been calling for raising standards in the PRS in numerous ways; from campaigning for the introduction of a national landlord register, to the improvement of energy efficiency measures in the PRS, CIEH have been at the forefront of calling for reform in the PRS.

In principle, the removal of Section 21 (S.21) 'no fault' evictions are to be welcomed, though we seek clarity on the detail as to how this is to be implemented. Several unintended consequences may result from this process without careful planning and oversight. Landlords must be afforded the right to take possession of their property in legitimate circumstances, however we would like to see the timeframe wherein a landlord cannot re-let their property post-possession increase from the proposed 3-month time frame to 6 months.

While the introduction of a National Ombudsman in the White Paper is a potential improvement with regards to transparency and stronger rights for redress for tenants, questions remain as to how this will be implemented in practice. Clarity will also be needed on where the respective jurisdiction of the Ombudsman begins and the relevant local authority ends, as well as clarity on how the Ombudsman's office is to be funded and resourced.

There are some concerns that, as per the findings of the Parliamentary Committee of Public Accounts, April 2022, that the PRS is overly complex and difficult to navigate for tenants, landlords and local authorities owing to the piecemeal approach to legislative changes.<sup>1</sup> While additional enforcement powers for local authorities are to be welcomed, this is an opportunity to review how new powers would sit alongside existing powers and feel government should take this opportunity to reduce the complexity of existing powers to create a more effective enforcement landscape.

A prevalent theme in our response is that any creation of new investigative or enforcement powers of local authorities should be met with additional funding and resource to ensure the effective carrying out of those powers.

Finally, CIEH strongly welcomes the introduction of a Property Portal, and wishes to see greater detail on how this will be delivered. Some concerns exist as to the potential of the Property Portal to be seen as a replacement for selective landlord licensing schemes which are important sources of revenue for local authorities.

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<sup>1</sup> [Regulation of private renting - Committee of Public Accounts \(parliament.uk\)](https://www.parliament.uk/publications/2022/04/regulation-of-private-renting/)

**4) Do the proposals for reforming tenancies, including the abolition of Section 21, strike the right balance between protecting tenants from unfair eviction and allowing landlords to take possession of their properties in reasonable circumstances?**

In principle, we welcome the inclusion of the removal of Section 21 (S.21) 'no fault' evictions but have several questions as to how this will take place in practice. The removal of S.21 in its current form does not reform all the current problems associated with tenancies. Some protection currently exists in several forms which invalidates the use of S.21, for example a failure to licence, retaliatory eviction and failure to protect deposits. With the reform of S.21, how will existing protections be adopted into future reforms? There may be unintended consequences to removing S.21, for example an absence of significant consequences for failing to protect a tenancy deposit could see an increase in the number of deposits not being protected.

Requiring a written tenancy agreement is welcome, but unless there is a mandated tenancy agreement format, there will remain a huge variation of tenancy terms, the use of unfair terms and inconsistency for tenants between tenancies. The inclusion of unfair terms, even if they are never enforced by the landlord or challenged as being unfair, significantly affect a tenant's decision to complain or exercise their rights through fear of eviction, penalties being imposed or general relationship breakdown affecting their tenancy going forward.

Serious questions remain regarding the remaining grounds for possession giving rise to the risk of exploitation. If possession is granted for the landlord wishing to sell or move into the property, who will monitor and enforce the "3-month restriction" on letting a property? The risk that some landlords may simply allow that relatively short timeframe to lapse, or worse, switch to perpetual short-term/holiday lets, means that we suggest increasing the timeframe in which a landlord can re-let their property after taking possession to 6 months. Furthermore, we would like clarity as to what measures will be in place to enable local authorities to be aware of landlords breaching these provisions. Information will need to be shared from relevant departments to ensure any landlords breaching these provisions are found out quickly and promptly dealt with.

We would also seek detail as to what evidence will be sufficient for a landlord to demonstrate that they intend to carry out a sale of a property, or that they or a family member are moving into the property.

Finally, a recent report from Safer Renting, demonstrates the lack of data regarding Court cases in respect of illegal evictions and highlights the variation between complaints raised against landlords versus action taken.<sup>2</sup> The removal of S.21 could have perverse unintended consequences by putting more tenants at risk of being illegally evicted and, considering the data provided in this report, action would not necessarily be taken against the landlord.

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<sup>2</sup> [Safer Renting, Offences under the Protection from Eviction Act 1977 in England and Wales](#)

## **6) Does the PRS need its own ombudsman? If so, what powers should it have?**

We believe that the PRS could benefit from a landlord Ombudsman and are in favour of these proposals in principle, but questions remain as to how this would be delivered in practice.

As well as landlords, the reforms must also ensure that alternative Property management arrangements, like rent to rent & property guardians are included in the membership requirements. These can be difficult to enforce under current requirements for redress membership which leaves tenants without access to redress.

The proposal to allow for Banning Orders to be made for failure to comply with an Ombudsman decision is a good suggestion, however, there needs to be clarity as to how this would be determined.

Having a landlord Ombudsman is to be welcomed, but there is a concern that this system of redress will only be used by some of the most engaged and motivated tenants. In 2014, a Shelter poll of private renters found that only 8% of renters complained to their local authorities about property conditions, a percentage disproportionate to the known incidence of problems in the sector. The report cited fear of retaliatory eviction as a principal obstacle.<sup>3</sup> With respect to the delivery of such a scheme, it must be easy to use and be an added layer of protection for tenants. Concerns remain as to what protections will be in place to prevent tenants who raise complaints via the Ombudsman from being subject to retaliatory evictions which are disguised as landlords legitimately seeking repossession. Ombudsman decisions need to be directly enforceable from the introduction of the new service to ensure tenants have confidence in using the service.

We would also seek clarity regarding the enforcement of the Ombudsman's duties. There needs to be clarity in defining the respective jurisdictions of the Ombudsman and Local Authorities. We are also seeking clarity on how the Ombudsman's office is to be resourced and funded, as well as suggesting the need to link up datasets between Local Authorities and central government to ensure that both local authorities and the Ombudsman's office have access to the same information. Having open, integrated data administered by central government would also overcome GDPR issues currently faced by many local authorities.

Finally, given that these proposals imply a risk of duplication of data between a national landlord Ombudsman, and proposed local authority property portals, we would again reiterate our calls for a National Landlord Register akin to similar schemes in Northern Ireland, Scotland and Wales. Such schemes would have the dual ability to both give local authorities a much stronger picture of PRS housing in their areas, while also leaving rogue landlords with nowhere to hide all while empowering renters to make informed choices about their housing options.

## **7) Will the proposals result in more disputes ending up in the courts? If so, will the proposals for speeding up the courts service suffice?**

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<sup>3</sup> [Report: Safe and Decent Homes - Shelter England](#)

There is a concern that these proposals evaluate adequate enforcement from the perspective of formal notices served, rather than measuring property improvement. It is our view that this is a false measure of the effectiveness of the Housing Act 2004 which is about property improvement as opposed to punishing people. The better regulation agenda pushes local authorities towards informal action, which may not always be the most suitable course of action. Greater guidance from government is needed to clarify whether local authorities should adopt formal or informal approaches.

Currently, when local authorities issue a landlord with an improvement order or financial penalty which a landlord can challenge or appeal at low cost through the Residential Property Tribunal. The Local Authority then is required to allocate time, money and resources in defending this appeal, yet the landlord is not required to meet the local authority's legal fees should the appeal not be upheld. This results in costs for Local Authorities which they cannot recoup. We suggest retaining the rights for landlords to appeal, but for costs to be awarded and the fee to appeal raised to dissuade spurious appeals being made to the Residential Property Tribunal.

There are concerns from enforcement officers that tougher enforcement measures which result in more formal notices being served may indeed lead to more disputes ending up at First-Tier Tribunal, yet there is little to suggest that these will result in better outcomes for tenants while serving to create an adversarial relationship between landlords and local authorities.

Finally, we would like to see a review of the First-Tier Tribunal process before any legislative changes are made. There are concerns that there currently exists a lack of consistency in the application of guidelines across various local authorities which creates confusion and lack of clarity. We feel that a review may help streamline this process and lessen the burden on local authorities.

## **10) What should be included in the new decent homes standard and how easily could it be enforced?**

While we welcome the introduction of a Decent Homes Standard (DHS) and the ambition to reduce the number of non-decent homes in the PRS by 50% by 2030, we are seeking clarity how the new DHS is going to interact with already existing standards which currently regulate the PRS.

As per the findings of the Parliamentary Committee of Public Accounts, April 2022, which found that *'the dozens of legislative powers used by local authorities are complex and spread across multiple enforcement bodies, creating a fragmented and disempowered regulatory system'*<sup>4</sup> it is our view that there is a risk that these reforms, rather than strengthen enforcement within PRS, could serve to add another layer of complexity to the already cumbersome, piecemeal nature of policymaking in this area.

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<sup>4</sup> [Regulation of private renting - Committee of Public Accounts \(parliament.uk\)](https://www.parliament.uk/publications/2022/04/regulation-of-private-renting/)

For example, the already existing Housing Health and Safety Rating System (HHSRS) has been under review for some time, a process which CIEH welcomed at the time.<sup>5</sup> Many EHPs have fed back that HHSRS is overly complex and difficult to enforce, with some now querying how the DHS is going to sit alongside the HHSRS. Research published by CIEH on the first 11 years' operation of the HHSRS, based on a survey of 170 EHPs, indicated that only 62% found the HHSRS as an improvement on the previous fitness standard.<sup>6</sup> This is not a particularly resounding endorsement.

There is a potential argument to be made that the DHS should represent a consolidation of the various regulatory standards as a means of simplifying this area, providing landlords, tenants and local authorities with clarity of the standard that is to be adhered to.

We would caution against any definition of a 'decent home' as merely being free from a Category 1 hazard, which is itself a vague and overly scrutinised definition itself. Such a definition is too low a standard and does not include the myriad ways in which living conditions can still be non-decent even in the absence of a Category 1 hazard.

Finally, there are concerns as to whether the DHS will create another layer of enforcement obligations on already under-resourced local authorities. While an extension of the power for local authorities to deal with issues that a DHS are likely to include are to be welcomed, these must also be met with additional funding and resource to ensure these powers are carried out effectively.

## **12) Overall, what additional pressures will the proposals place on local councils, and how many of these will require new burdens funding?**

Among the greatest challenges facing many local authorities, and indeed the entire Environmental Health profession, is a lack of capacity and recruitment challenges. This is true across the various disciplines within Environmental Health, and our members in housing are no different. Local authorities are facing challenges in recruiting and retaining staff which in turn hampers their ability to carry out their roles effectively.

One of the resounding responses from members with respect to the new proposals is that while added investigative or enforcement powers for local authorities are to be welcomed, this must also be met with additional resources and funding to carry out these powers.

These findings go beyond anecdote however, as CIEH Vice-President Dr Stephen Battersby's supplemental report on staffing levels among EHOs, published in March 2018, tells us that *"The average number of Environmental health officers available to inspect and enforce in respect of private rented accommodation was 2.46 in London and 2.2 elsewhere for 10,000 properties."*<sup>7</sup>

This report is now over 4 years old and is based on the size of the PRS at the last census in 2011, which has roughly doubled in the past 10 years.

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<sup>5</sup> [CIEH Praises Government Commitment to Update HHSRS](#)

<sup>6</sup> [CIEH, 2017, HHSRS 11 Years On.pdf \(cieh.org\)](#)

<sup>7</sup> [Final Staffing Report v2.2.pdf \(sabattersby.co.uk\)](#)

A September 2021 report, commissioned by DLUHC, found that there are numerous existing pressures which will likely be exacerbated if there are greater responsibilities placed on already stretched local authorities.<sup>8</sup>

The issue of staffing and resourcing is entirely absent from the White Paper which is a significant cause for concern. Local authorities do not have confidence in their long-term funding streams therefore do not have the confidence to implement long-term enforcement strategies. Long-term funding mechanisms would enable local authorities to provide sustainable frameworks for attracting and training staff therefore adding long-term resource into the sector. There is a significant shortage of experienced EHPs which stems from a shortage of EHPs coming through university. CIEH would like to collaborate with the government to think of new and innovative strategies for increasing enrolment onto environmental health university courses and apprenticeships. While recruiting greater numbers of enforcement officers is one possible solution to this issue, the significant amount of time needed to adequately train these officers will place a massive burden on already stretched local authority resources.

The Greater London Authority is currently running a 1-year PRS enforcement course at Middlesex University. Launched in October 2021, this a level 5 qualification accredited by the Chartered Institute of Environmental Health. One measure which may help reduce the shortage of resource in the sector is to roll out this scheme nationally.

It is apparent that there is a lack of resources, skills and experience within many local authorities already. We feel that while giving EHPs greater investigative and enforcement powers is to be welcomed, greater focus should be placed on properly resourcing local authorities to ensure they have adequate capacity to ensure effective enforcement of the powers they currently have.

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<sup>8</sup> [Local authority enforcement in the private rented sector: headline report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/local-authority-enforcement-in-the-private-rented-sector-headline-report)

*There are also several proposals within the White Paper, as well as topics within the PRS more generally which are outside the remit of the questions asked within the Terms of Reference that we would like to discuss. These are outlined below:*

## **Introduction of a Property Portal**

CIEH have long campaigned for the introduction of a National Landlords Register<sup>9</sup>, and while the inclusion of a Property Portal is a welcome step in the right direction, we are seeking clarity on how this will be delivered in practice.

There will need to be clarity as to what data will be required for the property portal, who has access to this data, as well as to what extent and in what capacity there is to be overlap with the proposal for a landlord ombudsman, as there are some concerns that both schemes represent a duplication of data.

Our view is that any property portal will only be as good as the amount of information that is contained on it. There needs to be adequate links to already existing resources such as the rogue landlord database and the EPC register for example with the use of Unique Property Reference Numbers as part of the portal from day one so that it remains a platform that can be built on over time and that all relevant data is built into the property portal in a single, readily accessible location for local authorities to avail of.

Property licensing schemes are a cost-effective, sustainably funded method of regulating the PRS which creates obligations on landlords devoid of tenant involvement and therefore acts as a regulatory method of improving property standards without tenant complaint. Therefore, reducing the risk of retaliatory evictions. It is important that any Property Portal works alongside these licensing schemes rather than replaces them.

Furthermore, given the importance of selective licensing schemes to local authorities as a source of funding, there exist added concerns as to whether the Property Portal is designed to act as a standalone register or will be designed to replace such schemes in future.

Finally, we hope that in its delivery, that there is no intention that the Property Portal facilitates the removal of property licensing schemes in favour of a 'Property MOT' approach.

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<sup>9</sup> [National landlord registration - CIEH](#)